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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/773,503

02/06/2004

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13045.20USC1

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23552 7590 12/30/2008  
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EXAMINER

PEFFLEY, MICHAEL F

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

12/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



Applicant's amendments and arguments, received September 15, 2008, have been fully considered by the examiner. The following is a complete response to the September 15, 2008 communication.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Information Disclosure Statement***

Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. **See MPEP 609.05(b)**. Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

The information disclosure statement filed September 15, 2008 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 102***

Claims 37, 39-51 and 53-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Eggers et al (6,032,674).

Eggers et al disclose a probe that includes an end-effector (i.e. distal end) that may simultaneously provide RF energy via one or more electrodes (270) and fluid (278) to tissue (see Figure 19). Eggers et al also disclose a dimensional change sensor (310) which is an ultrasound sensor that detects a change in the thickness of tissue as it is being ablated. The sensor is used to control the output of RF energy and alerts the user of changing tissue thickness to prevent creating too deep a channel in tissue (col. 23, lines 50-63). The examiner maintains the device is inherently a "shrinkage sensor" since the channel created by the device is creating a shrinking tissue area (i.e. channel) that is being detected by the sensor, and the sensor provides feedback regarding the shrinking of the tissue (i.e. the depth of the channel). Further, the sensor is inherently "configured to engage tissue" since it is provided on the distalmost surface of catheter (276) and may come into contact with tissue.

Eggers et al disclose various arrangements for the electrodes, and the device may be operated in either a monopolar or a bipolar manner. Eggers et al also provide for multiple fluid lumens (figure 2a).

### ***Claim Rejections - 35 USC § 103***

Claims 66-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulier et al (6,096,037) in view of the teachings of Huitema et al (5,562,702) and Eggers et al ('674).

Mulier et al disclose a device for clamping and treating electrodes, and specifically teach that providing an electrolytic solution from fluid outlets in the jaws will enhance the delivery of energy to tissue. Figures 4 and 5 show the electrode in the jaw

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member, the electrode having a plurality of fluid outlets for delivering fluid to tissue.

Mulier et al fail to specifically disclose a dimensional change sensor for measuring tissue thickness.

Huitema et al disclose another forceps device, and specifically teach that it is known to include sensors in forceps jaws for measuring tissue thickness (col. 9, lines 48-51). The Huitema et al forceps device may also include energy delivery means for treating tissue. Huitema et al fail to specifically disclose the type and placement of the thickness measuring sensor.

Eggers et al, as addressed previously, disclose a tissue thickness measurement sensor (310) that is located on the exterior surface of a catheter. Use of such a thickness measuring sensor on the surface of the forceps jaws is deemed an obvious design consideration.

To have provided the Mulier et al forceps device with a sensor for measuring tissue thickness would have been an obvious consideration for one of ordinary skill in the art, particularly since Huitema et al teach that it is known to provide such sensors on forceps devices. To have further provided a surface mounted sensor would have been an obvious design consideration since Eggers et al fairly teach it is known to use such a surface mounted sensor to monitor tissue thickness.

### ***Response to Arguments***

Applicant's arguments filed September 15, 2008 have been fully considered but they are not persuasive.

Applicant asserts that the Eggers et al sensor does not engage tissue. The examiner disagrees. The sensor (310) is clearly provided on the distalmost surface of catheter (276 – see Figure 19) and is clearly configured to come into contact with tissue. Note that one side of the catheter (276) is in contact with tissue. As asserted in the previous Office action, the examiner maintains the sensor is also inherently capable of moving with respect to tissue as the sensor travels into tissue as the channel is being created.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 7am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Peffley/  
Primary Examiner, Art Unit 3739

/mp/  
December 26, 2008